IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7604 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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PRADHYUMANSINH ALIAS PADUBHA SON OF PRAVINSINH JHALA

Versus

COMMISSIONER OF POLICE

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Appearance:

1. Special Civil Application No. 7604 of 2002

MS ARCHANA SINGH ON BEHALF OF

MS SUDHA R GANGWAR for Petitioner No. 1

MS NANDINI JOSHI AGP for Respondent No. 1-3

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CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/10/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 22/5/2002 passed by the Police Commissioner, Rajkot City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the impugned order of detention relying upon two offences registered against the petitioner under the Bombay Prohibition Act and also relying upon statements of two witnesses. The learned counsel for the petitioner has drawn my attention towards the grounds of detention and has submitted that while passing the impugned order of detention, the detaining authority has considered Sec.57(C) of the Bombay Police Act though the same is not applicable to the facts of the present case, as for invoking Sec.57(C) of the Bombay Police Act against the petitioner , minimum three offences are required to be proved against the petitioner within three years while in the present case, according to the detaining authority two offences are alleged to have been registered against the petitioner under the Bombay Police Act, but inspite of these fact, the detaining authority has wrongly considered Sec.57(C) of the Bombay Police Act which shows non-application of mind on the part of the detaining authority which vitiates the impugned order of detention and hence the impugned order of detention is required to be quashed and set aside.

4. Since the detaining authority has wrongly considered Sec.57(C) of the Bombay Police Act while passing the impugned order of detention which vitiates the impugned order of detention, the impugned order of detention cannot be sustained and is required to be quashed and set side.

5. The petition is allowed. The impugned order of detention dated 22/5/2002 passed against the detenu is hereby quashed. The detenu namely Pradhyumansinh alias Padubha son of Pravinsinh Jhala is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs. D.S.

Permitted.

(R.P.DHOLAKIA,J.)

Rafik